

R DALE GRIMES
TEL (615) 742-6244
FAX (615) 742-2744
dgrimes@bassberry.com

BASS, BERRY & SIMS PLC

A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

AMSOUTH CENTER
315 DEADERICK STREET, SUITE 2700
NASHVILLE, TN 37238-3001
(615) 742-6200

www.bassberry.com

RECEIVED OTHER OFFICES

2004 FEB 12 PM NASHVILLE MUSIC ROW
KNOXVILLE
MEMPHIS

T.R.A. DOCKET ROOM

February 12, 2004

VIA HAND DELIVERY

Ms. Deborah Taylor Tate, Chairman
TENNESSEE REGULATORY AUTHORITY
460 James Robertson Parkway
Nashville, Tennessee 37243

**Re: *Tennessee Coalition of Rural Incumbent Telephone Companies and
Cooperatives Request for Suspension of Wireless to Wireless Number
Portability Obligations Pursuant to Section 251(f)(2) of the Communications
Act of 1934, as Amended; Docket No. 03-00633***

Dear Chairman Tate:

Enclosed for filing in the above-referenced docket are an original and thirteen
copies of a supplemental attachment to United Telephone Company's response to
Request 1 of the TRA staff's Data Requests issued on January 14, 2004

Should you have any questions with respect to this filing, please do not hesitate to
contact me at the number shown above

Thanking you in advance for your assistance with this matter, I am

Very truly yours,



R. Dale Grimes

RDG/tn
Enclosure

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Telephone Number Portability

**United Telephone Company
Petition for Waiver of Section 52.23(e)
of the Commission's Rules**

)
)
)
)
)
)
)

CC Docket No. 95-116

To: Chief, Wireline Competition Bureau

PETITION FOR WAIVER

Pursuant to Sections 1.3, 1.925 and 52.23(e) of the Commission's Rules,¹ and the Commission's *Intermodal LNP Order*,² United Telephone Company (the "Company") hereby requests waiver of the November 24, 2003 implementation date requiring the Company to support wireline-to-wireless number portability ("intermodal porting"). As demonstrated herein, substantial and credible evidence exists that there are special circumstances that warrant departure from the November 24, 2003 date. Accordingly, and in compliance with the specific directives set forth in Section 52.23(e), the Company seeks an extension of time to support intermodal porting until May 10, 2004.³ In support thereof, the following is shown:

¹ 47 C.F.R. §§ 1.3, 1.925 and 52.23(e).

² In the Matter of Telephone Number Portability; CTIA Petition for Declaratory Ruling on Wireline-Wireless Porting Issues, CC Docket No. 95-116 at para. 7 (rel. Nov. 10, 2003) ("Intermodal LNP Order"). The Commission has stated that a carrier facing compliance issues with November 24, 2003 deadline may seek extension by filing a request for waiver. *Id.* at para. 30. Because this request for waiver is filed within sixty (60) days of the date of the November 24th deadline, a waiver of 47 C.F.R. § 52.23(e) is also requested to the extent necessary.

³ By seeking this extension of time, the Company does not waive any of its legal rights with respect to the *Intermodal LNP Order*, including, without limitation, with respect to seeking relief from a court of competent jurisdiction or the Tennessee Regulatory Authority with respect to the obligations imposed upon it by the *Intermodal LNP Order*. As provided for in the *Intermodal LNP Order*, this request is limited solely to the technical infeasibility of the Company's compliance with the November 24th deadline.

I. The Company and Pending Intermodal Requests

The Company is a rural local exchange carrier that provides local exchange and exchange access services within the following counties in Tennessee: Bedford, Davidson, Franklin, Maury, Moore, Rutherford and Williamson. Davidson, Rutherford and Williamson counties are located in an MSA that is among the largest 100 MSAs. Approximately fifty percent of this service territory encompasses areas that are sparsely populated. The Company serves approximately eight exchanges. The Company serves approximately 16,000 access lines in its entire service area.

The Company received a request from Sprint PCS dated May 16, 2003 to support intermodal portability by November 24, 2003.⁴ The request sought portability in the following switches: NLVLTNXARS1 and UNVLTNXARS0. As further discussed below, the Company, like the wireline industry in general, did not understand the request of the CMRS carrier to be a request for number portability enabling a customer to retain, at the same location, the use of the number. Accordingly, the Company did not act further on the request prior to the November 10, 2003 release of the *Intermodal LNP Order*.

II. Waiver is Warranted on the Basis of the Company's Compliance with Section 52.23(e) Criteria

The Company is and has been fully aware of its obligation established by Section 251(b)(2) of the Communications Act of 1934, as amended (the "Act") with respect to the implementation of LNP; it is likewise aware of the Commission's Section 252 Subpart C rules regarding number portability and, specifically, implementation requirements. Prior to the receipt of the request for number portability from the requesting CMRS carrier, the Company

⁴ A copy of the request is attached as Exhibit 1

had received no other requests for number portability, and, accordingly, had no basis for expending limited resources on the deployment of number portability. Given the set of circumstances surrounding the Commission's implementation of intermodal number portability, the Company has acted and continues to act in good faith to comply with the Commission's requirements. In compliance with Section 52.23(e), the Company sets forth the following information:

A. Section 52.23(e)(1): The Facts Demonstrate why the Company is Unable to Meet the Commission's Deployment Schedule

The Company utilizes a Lucent switch. Lucent has informed the Company that it will take up to three months from the initial order date to install and test the required upgrades for the necessary software required to comply with the request that had been received. In addition, the Company is not technically able to comply with what appear to be the requirements of the *Intermodal LNP Order* with respect to the transport of and "rating"⁵ of calls to a number ported to a wireless carrier.

As a result of the logistic realities, the Company has, in good faith, determined that it is not possible to implement and test the necessary switch-related changes prior to the November 24th deadline.

B. Section 52.23(e)(2): A Detailed Explanation of the Activities that the Carrier has Undertaken to Meet the Implementation Schedule Prior to Requesting an Extension of Time

In good faith, the Company attempted to meet the implementation schedule prior to requesting an extension of time. The Company did provide preliminary information to

⁵ Local exchange carriers do not "rate" their local exchange services.

requesting carriers upon request including information regarding switch locations and capabilities.

As discussed, prior to the issuance of the *Intermodal LNP Order*, the Company, like other similarly situated carriers in general, did not take additional action to implement number portability because of the understanding that the CMRS carrier request exceeded the Commission's expectations and the statutory requirements set forth in the Act. After the issuance of the *Intermodal LNP Order*, the Company has proceeded with good faith efforts toward the implementation of number portability including the commitment of the necessary financial resources required to acquire and deploy the required switch upgrades. Additional inquiries to the requesting wireless provider have been undertaken to ensure proper coordination, and the Company is working with its switch vendor to go forward with the necessary switch changes.

C. Section 52.23(e)(3): An Identification of the Particular Switches for Which the Extension is Requested

The particular switches for which the extension is requested are:

CPHLTNXADS2
UNVLTNXARS0
NLVLTNXARS1
ESSPTNXARS0

Section 52.23(e)(4): The Time in Which the Carrier Will Complete Deployment in the Affected Switches

The Company will attempt to complete deployment in the affected switches by May 10, 2004, six months after the issuance of the Commission's *Intermodal LNP Order* in which the Commission provided guidance of the intermodal porting requirements. The Company notes

that its implementation schedule is dependent upon its switch vendor, and coordination and testing between it and the requesting wireless provider. While the implementation of the necessary switch changes will technically enable the provision of number portability, the Company also remains concerned that technical compliance with the directives of the *Intermodal LNP Order* regarding the treatment of calls from the Company's network to a number ported to a wireless carrier is not technically feasible in the absence of the deployment of a physical connection of the wireless carrier to the Company's network.⁶

E. Section 52.23(e)(5): A Proposed Schedule with Milestones for Meeting the Deployment Date

The Company will provide the Commission with quarterly progress reports during the period within which the extension is provided. Those reports will provide the Commission with all relevant progress, the dates of the purchase and installation of the upgrades, and a summary of the steps taken and to be taken regarding the Company's ability to support intermodal porting.

III. Additional Facts Supporting the Company's Request for Waiver

As set forth above, the Company meets all relevant criteria established in Section 52.23(e) to support the Company's waiver request. The Company respectfully submits that additional support for the requested waiver is found within the context of the Company's good faith approach to its porting obligations.

The Company, like most (if not all) providers of wireline local exchange services, did not expect that its statutory obligation to provide number portability extended to a CMRS request for

⁶ The relief requested herein, however, is limited to the request for a waiver of the implementation time in order to afford the company the time necessary to implement the necessary switch changes. The Company anticipates that the Commission will subsequently address the general deployment concerns regarding calls to a ported number in other proceedings, and respectfully reserves the right to seek additional relief to the extent necessary to ensure its full compliance with the Commission's applicable rules.

number portability under the existing Part 52 rules unless the requesting CMRS carrier confirmed that the number would be used by the telecommunications user "at the same location" where the customer used the number prior to portability.⁷ The record before the Commission prior to the *Intermodal LNP Order* bears out the existence of this general industry understanding.⁸

In hindsight, the Company also took misplaced comfort in the public statements from FCC decision-making staff that the issues regarding intermodal porting would be resolved well in advance of the November 24, 2003 deadline. In responding to questions regarding FCC action on pending issues regarding number portability, John Muleta, Chief of the FCC's Wireless Telecommunications Bureau stated, "We'll do it soon. . . We've said that we will address it well in advance of the Nov. 24 LNP deadline."⁹ As late as October 7, 2003, the FCC likewise made clear that its decisions to date did not address intermodal porting issues:

[W]e do not here address the issues related to wireline-wireless porting. Issues associated with wireline-wireless porting will be addressed in a separate item, and we affirm that none of the actions taken here today bind the Commission in any way in taking future action on the implementation of wireline-wireless porting.¹⁰

⁷ 47 U.S.C. § 153(30).

⁸ See, e.g., Comments of CTIA, CC Docket No. 95-116, filed May 13, 2003 at 5; Comments of United States Cellular Corporation, CC Docket No. 95-116, filed February 26, 2003 at 4; Comments of Verizon Wireless, CC Docket No. 95-116, filed June 13, 2003; Comments of Cingular Wireless, LLC, CC Docket No. 95-116, filed June 13, 2003 at 25; Comments of AT&T Wireless Services, Inc., CC Docket No. 95-116, filed on June 24, 2003 at 1. In fact, the *Intermodal LNP Order*, prior FCC actions, and public statements from FCC decision-making personnel demonstrate the Commission's awareness of this general understanding. See e.g., *Intermodal LNP Order* at para. 1; the Commission's Daily Digest announcing the issuance of the *Intermodal LNP Order* states: "FCC CLEARS WAY FOR LOCAL NUMBER PORTABILITY BETWEEN WIRELINE AND WIRELESS CARRIERS." The existence of uncertainty, confusion and the need for clarification was well known and understood.

⁹ FCC Officials Press Wireless Firms to Move Ahead on LNP Deployment," TR Daily, Sept. 8, 2003 ed.

¹⁰ In the Matter of Telephone Number Portability – Carrier Requests for Clarification of Wireline-Wireless Porting Issues: Memorandum Opinion and Order, CC Docket No. 95-116, FCC 03-237 at para. 21 (rel. Oct. 7, 2003)

As the totality of the circumstances demonstrate, the Company acted in good faith in response to the number portability request of the CMRS carrier, and had a reasonable basis to await the Commission's directives. The Company held a reasonable good faith expectation that the uncertainty and associated issues surrounding the matter of intermodal porting would be resolved in sufficient time to permit the Company to deploy intermodal number portability within a time frame consistent with the six month period established in the Commission's rules.

Because of the acknowledged uncertainty throughout the industry regarding the intermodal portability issues, and the Commission's promised direction, the Company had no expectation that a strict reading of the Commission's anticipated decision could possibly require the Company to support intermodal porting by November 24, 2003. The Company's circumstances are dissimilar to those of other carriers that have previously received requests to deploy wireline to wireline portability because the Company has never previously received a request for wireline to wireline portability. Accordingly, those companies that already deployed the hardware changes to comply with prior requests may very well be technically capable of supporting intermodal portability on November 24, 2003. For all of the reasons provided above, the Company is not technically capable of meeting this deadline.

IV. Conclusion

As demonstrated by its actions, the Company has not shirked its obligation to respond to a *bona fide* request to implement number portability. The Company acted prudently prior to the Commission's provision of direction in the *Intermodal LNP Order*. The Company did not ignore any request for number portability and it provided all information sought by any requesting

carrier. Subsequent to the provision of direction by the Commission provided in the *Intermodal LNP Order*, the Company has undertaken efforts to deploy number portability.¹¹

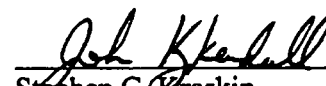
As demonstrated above, and in the context of the totality of the circumstances leading up to the issuance of the Commission's *Intermodal LNP Order*, the Company has demonstrated that it meets the Section 52.23(e) criteria to support its request for waiver and extension of the November 24, 2003 number portability implementation date. The Company respectfully submits that a grant of this request under these specific facts and circumstances is consistent with the Commission's recognition that its consideration of requests for waivers of the November 24th deadline be accomplished in "such manner as will best conduce to the proper dispatch of business and to the ends of justice."¹²

For the reasons stated herein, the Company requests that the Commission grant it until May 10, 2004 with respect to its obligations to support intermodal porting as provided for in the Commission's *Intermodal LNP Order*.

Respectfully submitted,

United Telephone Company

By: _____


Stephen G. Kraskin
Thomas J. Moorman
John Kuykendall
Kraskin, Lesse & Cosson, LLC
2120 L Street, N.W., Suite 520
Washington, D.C. 20037
Tel. No. (202) 296-8890
Fax No. (202) 296-8893

November 21, 2003

¹¹ Factually, no requesting carrier has indicated to the Company an actual specific intent to port a number on November 24, 2003. The Company will contact the requesting carrier regarding this waiver request, and offer to work toward a mutual coordination of deployment.

¹² 47 U.S.C. §154(j).

EXHIBIT 1



Sprint PCS

Sprint PCS
6580 Sprint Parkway
Mailstop: KSOPHW0516-5B360
Overland Park, KS 66251
(913) 794-9486
fromig01@sprintspectrum.com

May 16, 2003

To Whom It May Concern:

Enclosed is the Bonafide Request Form (BFR) as required by the FCC mandate (CC Docket 95-116) to request deployment of long term Local Number Portability. CMRS providers are required to provide LNP by November 24, 2003. This BFR is being sent in anticipation of that date. Please note the effective date requested reflects this requirement.

Please feel free to contact me at the numbers and email address provided above. Alternatively, you may contact Jeff Adrian at phone number (407) 622-4170 or at email address: jadria01@sprintspectrum.com if you need assistance.

Sincerely,

Fawn Romig
Industry Compliance and Operational Network Support
Numbering Solutions

Enclosure

Ask Donna to complete.
FR

Together Everyone Achieves More

Bonafide Request Form (BFR)

Purpose: This form is used to request deployment of long-term Local Number Portability as defined in the FCC mandates (CC

Docket 95-116). Specifically, this form requests that ALL codes be opened for portability within the Metropolitan Statistical Area and wireline switch CLLI codes designated below. This form may be used for both wireless and wireline requests.

TO (RECIPIENT):

OCN: 0581
Company Name: UNITED TEL CO INC.
Contact Name: HERBERT RIVENS

Contact's Address: TAYLOR STREET
P.O. BOX 38
CHAPEL HILL TN 37034
Contact's Phone: 615-364-2227

FROM (REQUESTOR):

Company Name: Sprint PCS
Contact Name: Fawn Romig
Contact's Address: 6580 Sprint Parkway
Mankato, MN 56001
Overland Park, KS 66210
Contact's Email: ffromig01@sprintpectrum.com
Contact's Fax: (913) 523-8333
Contact's Phone: (913) 794-9486

TIMING:

Date of Request: May 23, 2003
Receipt Confirmation Due By: June 9, 2003
Effective Date: November 24, 2003

Designated Wireline Switch CLLI Codes:

1st CLLI: NLVLTNXARS1
2nd CLLI: UNVLTNXARS0
3rd CLLI:
4th CLLI:
5th CLLI:
6th CLLI:

Designated Metropolitan Statistical Areas (MSAs):

Note: MSAs refer to the U.S. Census Bureau MSAs. These may differ from the MSAs as separately defined by the wireless or wireline industries.

MSA_NAME:

Nashville, TN

Actions Required of the Recipient:

1. Within 10 days of receipt, provide confirmation to the requester that this form has been received.
2. For all currently released codes, and those to be released at any future time, within the designated U.S. Census Bureau MSAs and wireline switch CLLI codes (where applicable), open all for porting within the LERG.
3. For all currently released codes, and those to be released at any future time, within the designated U.S. Census Bureau MSAs and wireline switch CLLI codes (where applicable), open all for porting within the NPAC (Number Portability Administration Center).
4. Ensure that all switches handling codes within the designated MSAs are Local Number Portability capable.

Monday, May 12, 2003

BFR Checklist Form v04 020204.doc

DECLARATION OF HERBERT R. BIVENS

I, Herbert R. Bivens, Asst. Treasurer/General Manager of United Telephone Company do hereby declare under penalties of perjury that I have read the foregoing "Petition for Waiver" and that the facts stated therein are true and correct, to the best of my knowledge, information, and belief.

Date: November 21, 2003


[signature]

CERTIFICATE OF SERVICE

I, Ka Triska Orville, of Kraskin, Lesse & Cosson, LLC, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Petition for Waiver" was served on this 21st day of November 2003, via hand delivery to the following parties:


Ka Triska Orville

William Maher, Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Cheryl Callahan, Assistant Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW

Eric Einhorn, Chief
Telecommunications Access Policy
Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Qualex International
445 12th Street, SW
Room CY-B402
Washington, DC 20554